

Message Text

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ACTION EA-12

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C O N F I D E N T I A L KUALA LUMPUR 9322

CINCPAC FOR POLAD

E. O. 11652: GDS
TAGS: PINT, SHUM, MY
SUBJ: HUMAN RIGHTS: LEGAL DEVELOPMENTS

REF: A) KUALA LUMPUR A-70, 08/04/78 (NOTAL), B) KUALA LUMPUR
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1. SUMMARY. THREE RECENT COURT DECISIONS REFLECT THE CONTINUING
INDEPENDENCE OF THE JUDICIARY IN MALAYSIA. END SUMMARY.

2. THE FEDERAL COURT RULED AUG. 28 THAT QUEEN'S COUNSEL LOUIS
BLOOM-COOPER CAN BE ADMITTED AS AN ADVOCATE AND SOLICITOR OF THE
HIGH COURT TO ACT AS LEADING COUNSEL IN THE DEFENSE OF OPPOSITION
LEADER LIM KIT SIANG IN HIS TRAIL FOR VIOLATINS OF THE OFFICIAL
SECRETS ACT. THE HIGH COURT HAD RULEDON JULY 10 THAT BLOOM- COOPER
COULD NOT BE ADMITTED AS LIM'S ATTORNEY (REFTEL B). THE TRIAL WILL
BEGIN OCTOBER 3.

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3. IN RULING TO ADMIT BLOOM-COOPER, ACTING CHIEF JUSTICE RAJA AZLAN
SHAH, WHO HAD ALLOWED A POSTPONEMENT OF LIM'S TRIAL ON JULY 17 SO
THAT THE QUESTION OF THE QUEEN'S COUNSEL COULD BE PURSUED, SAID
"A SINGULAR FEATURE OF THE FORTHCOMING CASE IS THAT IT INVOLVES,
INTER ALIA, THE QUESTION RELATING TO THE DUTIES OF A MEMBER OF
PARLIAMENT AND PARLIAMENTARY PRIVILEGES BOTH INSIDE AND OUTSIDE
PARILAIMENT, WHICH QUESTION IS OF CONSIDERABLE PUBLIC INTEREST AND

IS BEING RAISED FOR THE FIRST TIME IN THIS COUNTRY." AZLAN SHAH ALSO NOTED THAT THE UNITED KINGDOM OFFICIAL SECRETS ACT ON WHICH THE MALAYSIAN ACT IS BASED IS BEING QUESTIONED IN THE UK AS NO LONGER EFFICACIOUS."WE FEEL THAT ONE WAY OF FINDING A POSSIBLE ANSWER TO THE QUESTION BEFORE US IS TO SEE HOW SIMILAR PROBLEMS ARE DEALT WITH IN COUNTRIES WHICH HAVE FUNDAMENTALLY THE SAME LAW. IN OUR VIEW, CONSIDERING OTHER PEOPLE'S LAW IS THE USUAL WAY TO SEE OURSELVES AS OTHERS SEE US. PERHAPS THE CORRECTNESS OF OUR OWN DECISIONS CAN BE CONFIRMED OR SOME IDEAS FOR IMPROVEMENTS MAY BE DISCERNED BY LOOKING AT THEM. WE HAVE NO DOUBT THAT THE APPLICANT (BLOOM-COOPER) MAY BE ABLE TO ASSIST US AT FIRST HAND."

4. IN AN UNRELATED DEVELOPMENT, THE HIGH COURT ON AUG. 28 ORDERED THE RELEASE OF 17-YEAR-OLD YOUTH WONG CHENG HO FROM FURTHER DETENTION UNDER THE EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969 (EO). IN RULING ON WONG'S APPLICATION FOR WRIT OF HABEAS CORPUS, JUSTICE SYED OTHMAN SAID THAT THE EO DOES NOT APPLY TO JUVENILES BECAUSE THE JUVENILE COURTS ACT WAS PASSED BY PARLIAMENT FOR DEALING WITH JUVENILE OFFENDERS. UNLESS OTHER LAWS MAKE SPECIFIC PROVISION THAT THEY SHALL APPLY TO JUVENILES, WHICH THE EO DOES NOT, THOSE LAWS CAN NOT BE USED AGAINST YOUNG OFFENDERS. (WONG HAS BEEN DETAINED SINCE APRIL 6 WITHOUT TRIAL UNDER THE EO AS AN ALLEGED ACTIVE MEMBER OF A SECRET SOCIETY.) THIS DECISION DOES NOT AFFECT THE DETENTION OR CONVICTION OF JUVENILES UNDER THE INTERNAL SECURITY ACT AS THE CONFIDENTIAL

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ISA MAKES PROVISION FOR TREATING JUVENILES AS ADULTS.

5. COMMENT THESE TWO CASES, PLUS THE RECENT HIGH COURT DECISION THAT FOUR POLICEMEN SHOULD BE SENT TO JAIL FOR BRUTALITY (REF A), INDICATE THE HIGH STANDARDS OF JUDICIAL INDEPENDENCE PREVAILING IN MALAYSIA. IN THE LIM KIT SIANG AND WONG CHENG HO CASES THE COURTS DECIDED AGAINST THE GOVERNMENT AND IN FAVOR OF DEFENDENTS COMPLAINING AGAINST ARBITRARY GOVERNMENT ACTION. (IN THE BRUTALITY CASE THE POLICEMEN WERE THEMSELVES THE DEFENDENTS, BUT ACQUITTAL WOULD HAVE VINDICATED CERTAIN GOVERNMENT ACTIONS.) STEEPED IN THE BRITISH LEGAL TRADITION, THE MALAYSIAN COURTS, ESPECIALLY AT THE HIGHER LEVELS, ARE GENERALLY HELD BY THE LEGAL COMMUNITY, INCLUDING THE MALAYSIAN BAR COUNCIL, TO BE DEDICATED TO THE RULE OF LAW AND NOT SUSCEPTIBLE TO PRESSURE FROM THE EXECUTIVE. INDEED, THE BAR COUNCIL'S MAJOR COMPLAINT WITH THE GOM IS ITS ARBITRARY USE OF LEGISLATION TO CIRCUMSCRIBE THE SCOPE OF THE COURTS BY IMPOSING MANDATORY SENTENCING, EXPANDING THE USE OF DETENTION WITHOUT TRIAL THROUGH THE ISA AND THE EO, AND SHORT-CIRCUITING NORMAL JUDICIAL SAFEGUARDS BY USE OF THE ESSENTIAL (SECURITY CASES) REGULATIONS OF 1975. THE GOM FEELS JUSTIFIED IN THESE ACTIONS AS NECESSARY TO DEFEAT AN ACTIVE ARMED INSURGENCY, AND IN ANY CASE

ONLY USES THEM INFREQUENTLY. THE GREAT MAJORITY OF CIVIL AND
CRIMINAL CASES IN MALAYSIA ARE TRIED UNDER THE INDEPENDENT
BRITISH-STYLE JUDICIAL SYSTEM.
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